IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.MC.No. 607 of 2007()

CC.175/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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PETITIONER:

A.P.BASHEERUL HAFI @ RAFI,
S/O.MOHAMMED, ANGAMANTE PURAKKAL,
SADDAM BEACH, PARAPPANANGADI,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
THE STATION HOUSE OFFICER, PARAPPANANGADI
POLICE STATION, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.607 of 2007

Dated this the 6th day of March, 2007

ORDER

The petitioner is the defacto complainant in a prosecution under Sections 341 and 323 read with 34 I.P.C. Altogether there are 4 accused persons. The crux of the allegation is that on account of prior animosity, the accused persons inflicted violence on the petitioner. They wrongfully restrained him. The 1st accused allegedly tightened a towel around the neck of the petitioner. He was beaten and kicked by accused 2 to 4. His testicles were squeezed. As a result of such violence inflicted, he is alleged to have suffered injuries which are described to be simple.

2. Final report has been filed. Cognizance has been taken. The petitioner has come to this Court with the short grievance that charge under Section 307 I.P.C must have been raised against the accused persons. In not doing that, failure of justice has resulted. Going by the nature of the allegations, the nature of injuries and the manner of attack, charges under Section 307 I.P.C must have been raised, submits the learned counsel for the petitioner. The learned counsel for the petitioner only submits that the learned Magistrate may at the appropriate stage be directed to consider this grievance of the petitioner that charge under Section 307 I.P.C must have been

raised against the accused persons by the Investigating Officer and charge under Section 307 I.P.C must be framed by the court.

3. Trial has not commenced. I need only observe that in the course of the trial, the learned Magistrate must alertly consider whether in the circumstances of the case an allegation under Section 307 I.P.C deserves to be raised against the accused persons. If so, the learned Magistrate will have to do the needful in the matter. In as much as the Magistrate shall have no jurisdiction to try an offence under Section 307 I.P.C, the learned Magistrate, if he entertains the requisite satisfaction, will certainly have to commit the case to the Court of Sessions under Section 323 read with 209 I.P.C to the learned Sessions Judge. I need only observe at this stage that the learned Magistrate must alertly consider this question at the appropriate stage. The petitioner can make that request before the learned Magistrate.

4. This Crl.M.C is, allowed in part - to the above extent.

H/O

(R.BASANT, JUDGE)

rtr/-